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10/806,044	03/22/2004	David J. Thomsen	333628003US1	9996

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EXAMINER

DAYE, CHELCIE L

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2161

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ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/806,044	Applicant(s) THOMSEN, DAVID J.	
	Examiner CHELCIE DAYE	Art Unit 2161	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3, 10-12 and 30-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3, 10-12 and 30-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>3/5/10</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is issued in response to applicant's RCE filed July 13, 2010.
2. Claims 3, 10-12, and 30-36 are presented. Claim 36 is added and claims 1-2, 4-9, and 13-29 remain cancelled.
3. Claims 3, 10-12, and 30-36 are pending.
4. Applicant's arguments filed July 13, 2010, have been fully considered but they are not persuasive.

Continued Examination Under 37 CFR 1.114

5. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 13, 2010 has been entered.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claim 3 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

More specifically, claim 3 recites an additional feature of “wherein the publicly available web site is available to the users to access information without a login requirement”; however, the examiner is unable to locate such details/requirements within the instant application. In particular, the applicant’s specification does not mention nor hint around the fact that a login requirement is or is not acceptable. As such, the newly amended claim contains new subject matter which is not supported within the description.

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 is rejected under 35 U.S.C. 112, second paragraph, for having negative limitations, which are not clearly pointed out within the description. Specifically, the claim recites the limitation “wherein the publicly available web site is available to the users to access information without a login requirement”. The current view of the courts

is that there is nothing inherently ambiguous or uncertain about a negative limitation. So long as the boundaries of the patent protection sought are set forth definitely, albeit negatively, the claim complies with the requirements of 35 U.S.C. 112, second paragraph. Some older cases were critical of negative limitations because they tended to define the invention in terms of what it was not, rather than pointing out the invention. Thus, the court observed that the limitation "R is an alkenyl radical other than 2-butenyl and 2,4-pentadienyl" was a negative limitation that rendered the claim indefinite because it was an attempt to claim the invention by excluding what the inventors did not invent rather than distinctly and particularly pointing out what they did invent. In *re* Schechter, 205 F.2d 185, 98 USPQ 144 (CCPA 1953). A claim which recited the limitation "said homopolymer being free from the proteins, soaps, resins, and sugars present in natural Hevea rubber" in order to exclude the characteristics of the prior art product, was considered definite because each recited limitation was definite. In *re* Wakefield, 422 F.2d 897, 899, 904, 164 USPQ 636, 638, 641 (CCPA 1970). In addition, the court found that the negative limitation "incapable of forming a dye with said oxidized developing agent" was definite because the boundaries of the patent protection sought were clear. In *re* Barr, 444 F.2d 588, 170 USPQ 330 (CCPA 1971). Any negative limitation or exclusionary proviso must have basis in the original disclosure. If alternative elements are positively recited in the specification, they may be explicitly excluded in the claims. See *In re* Johnson, 558 F.2d 1008, 1019, 194 USPQ 187, 196 (CCPA 1977) ("[the] specification, having described the whole, necessarily described the part remaining."). See also *Ex parte* Grasselli, 231 USPQ 393 (Bd. App. 1983), *aff'd* mem.,

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738 F.2d 453 (Fed. Cir. 1984). The mere absence of a positive recitation is not basis for an exclusion. Any claim containing a negative limitation, which does not have basis in the original disclosure should be rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. Note that a lack of literal basis in the specification for a negative limitation may not be sufficient to establish a prima facie case for lack of descriptive support. *Ex parte Parks*, 30 USPQ2d 1234, 1236 (Bd. Pat. App. & Inter. 1993). See MPEP § 2163 - § 2163.07(b) for a discussion of the written description requirement of 35 U.S.C. 112, first paragraph. The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention. The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention. A claim may be written in independent or, if the nature of the case admits, in dependent or multiple dependent form. Subject to the following paragraph, a claim in dependent form shall contain a reference to a claim previously set forth and then specify a further limitation of the subject matter claimed. A claim in dependent form shall be construed to incorporate by reference all the limitations of the claim to which it refers. Corrections are required.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. **Claims 3, 10-12, and 30-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGovern (US Patent No. 6,370,510) filed September 7, 1999, in view of Barney (US Patent No. 6,070,143) filed December 5, 1997, further in view of "O*NET 98 Data Dictionary", Release 1.0, referred to hereinafter as 'ONET'.**

Regarding Claims 3, 10, and 36, McGovern discloses a method for providing and collecting information associated with a collection of occupational summaries including occupational titles, the method comprising:

providing a publicly available web site for users of occupational summaries, wherein the publicly available web site allows the users of occupational summaries to access information associated with the collection of occupational summaries (col.2, lines 1-8 and col.9, lines 36-43, McGovern)¹ and to contribute information used to update the collection of occupational summaries (col.10, lines 37-56, McGovern), and wherein the publicly available web site is available to the users to access information without a login requirement (col.2, lines 4-6, McGovern);

providing access to information recently contributed via the publicly available web site (col.9, lines 43-47, McGovern).

However, McGovern is not as detailed with the available web site allowing for more than individual available job postings; and the recently contributed information includes information being contributed using questionnaire forms.

On the other hand, Barney discloses the available web site allowing for more than individual available job postings (cols.2-3, lines 56-67 and 1-13; respectively, Barney); and the recently contributed information includes information being contributed using questionnaire forms (col.6, lines 10-54, Barney). McGovern and Barney are analogous art because they are from the same field of endeavor of employment opportunities. It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate Barney's teachings into the McGovern system. A skilled artisan would have been motivated to combine in order to automate job analysis that allows accessibility across wide geographical spans and to ensure ongoing data integrity within the system.

Therefore, the combination of McGovern in view of Barney, disclose automatically updating the collection of occupational summaries based on receiving a submission of a questionnaire form accessed from the publicly available web site and at least partially completed (col.1, lines 35-38; col.6, lines 10-54; and col.7, lines 40-44, Barney), and wherein the updating includes either (a) adding a new occupational title (col.9, lines 26-42, McGovern) or (b) modifying data measures associated with an

¹ Examiner Notes: The brief description and detailed description correspond to the occupational

occupational title that already exists in the collection of occupational summaries. While the examiner fully believes that Barney discloses data measures associated with an occupation (see col.6, lines 46-50, Barney); however Barney is not as detailed as the examiner would like. On the other hand, ONET discloses one or more data measures associated with an occupation (pages 13-15 and 48-76, ONET). McGovern, Barney, and ONET are analogous art because they are from the same field of endeavor of supplying occupational information. It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate ONET's teachings into the McGovern and Barney system. A skilled artisan would have been motivated to combine in order to provide the user with information, which was more detailed and self-related to what the user desired and capable of performing.

Regarding Claim 11, the combination of McGovern in view of Barney, further in view of ONET, disclose the method wherein the questionnaire is a job analysis questionnaire (cols.2-3, lines 53-67 and 1-6, respectively; Barney).

Regarding Claim 12, the combination of McGovern in view of Barney, further in view of ONET, disclose the method wherein the questionnaire is a job analysis questionnaire and wherein the questionnaire is pregraded to provide default answers for the specified occupation (pages 39-47, ONET).

Regarding Claim 30, the combination of McGovern in view of Barney, further in view of ONET, disclose the method wherein the one or more modified data measures includes skill collection information for the associated occupation (pages 3,7,11-12, and 85, ONET).

Regarding Claim 31, the combination of McGovern in view of Barney, further in view of ONET, disclose the method wherein the one or more modified data measures includes industry definition information for the associated occupation (pages 14 and 87, ONET).

Regarding Claim 32, the combination of McGovern in view of Barney, further in view of ONET, disclose the method wherein the one or more modified data measures includes stress related work measure information for the associated occupational title (pages 36,38,and 86, ONET).

Regarding Claim 33, the combination of McGovern in view of Barney, further in view of ONET, disclose the method wherein the updating includes performing statistical analysis relating to the worker measure information associated with the specified occupation (pages 13 and 56-76, ONET).

Regarding Claim 34, the combination of McGovern in view of Barney, further in view of ONET, disclose the method wherein the questionnaire is a direct analysis

questionnaire configured so that raw data from the form is in a format that facilitates direct submission to a raw data database associated with the computer system (cols.2-3, lines 53-67 and 1-6, respectively; Barney).

Regarding Claim 35, the combination of McGovern in view of Barney, further in view of ONET, disclose the method wherein the questionnaire is a job analysis questionnaire that models publicly available work desk papers used by disability determination adjudicators (pages 77-83, ONET).

Claim 36 is rejected under the same premise as independent claims 3 and 10.

ALTERNATE REJECTION:

12. Claims 3, 10-12, and 30-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGovern (US Patent No. 6,370,510) filed September 7, 1999, in view of Barney (US Patent No. 6,070,143) filed December 5, 1997, further in view of “O*NET 98 Data Dictionary”, Release 1.0, referred to hereinafter as ‘ONET’, and further in view of Vianello (US Patent No. 7,424,438) filed March 19, 2002.

Regarding Claims 3, 10, and 36, McGovern discloses a method for providing and collecting information associated with a collection of occupational summaries including occupational titles, the method comprising:

providing a publicly available web site for users of occupational summaries, wherein the publicly available web site allows the users of occupational summaries to access information associated with the collection of occupational summaries (col.2, lines 1-8 and col.9, lines 36-43, McGovern)² and to contribute information used to update the collection of occupational summaries (col.10, lines 37-56, McGovern); and

providing access to information recently contributed via the publicly available web site (col.9, lines 43-47, McGovern).

However, McGovern is not as detailed with the available web site allowing for more than individual available job postings; and the recently contributed information includes information being contributed using questionnaire forms.

On the other hand, Barney discloses the available web site allowing for more than individual available job postings (cols.2-3, lines 56-67 and 1-13; respectively, Barney); and the recently contributed information includes information being contributed using questionnaire forms (col.6, lines 10-54, Barney). McGovern and Barney are analogous art because they are from the same field of endeavor of employment opportunities. It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate Barney's teachings into the McGovern system. A skilled artisan would have been motivated to combine in order to automate job analysis that allows accessibility across wide geographical spans and to ensure ongoing data integrity within the system.

² Examiner Notes: The brief description and detailed description correspond to the occupational summaries.

Therefore, the combination of McGovern in view of Barney, disclose automatically updating the collection of occupational summaries based on receiving a submission of a questionnaire form accessed from the publicly available web site and at least partially completed (col.1, lines 35-38; col.6, lines 10-54; and col.7, lines 40-44, Barney), and wherein the updating includes either (a) adding a new occupational title (col.9, lines 26-42, McGovern) or (b) modifying data measures associated with an occupational title that already exists in the collection of occupational summaries. While the examiner fully believes that Barney discloses data measures associated with an occupation (see col.6, lines 46-50, Barney); however Barney is not as detailed as the examiner would like. On the other hand, ONET discloses one or more data measures associated with an occupation (pages 13-15 and 48-76, ONET). McGovern, Barney, and ONET are analogous art because they are from the same field of endeavor of supplying occupational information. It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate ONET's teachings into the McGovern and Barney system. A skilled artisan would have been motivated to combine in order to provide the user with information, which was more detailed and self-related to what the user desired and capable of performing.

However, McGovern does not explicitly disclose wherein the publicly available web site is available to the users to access information without a login requirement.

On the other hand, Vianello discloses wherein the publicly available web site is available to the users to access information without a login requirement (col.17, lines 45-49 and col.29, lines 21-23, Vianello). It would have been obvious to one of ordinary

skill in the art at the time of the invention to incorporate Vianello's teachings into the McGovern, Barney, and ONET system. A skilled artisan would have been motivated to combine in order to provide a system that reaches the masses and without any type of restraints.

Regarding Claim 11, the combination of McGovern in view of Barney, further in view of ONET, and further in view of Vianello, disclose the method wherein the questionnaire is a job analysis questionnaire (cols.2-3, lines 53-67 and 1-6, respectively; Barney).

Regarding Claim 12, the combination of McGovern in view of Barney, further in view of ONET, and further in view of Vianello, disclose the method wherein the questionnaire is a job analysis questionnaire and wherein the questionnaire is pregraded to provide default answers for the specified occupation (pages 39-47, ONET).

Regarding Claim 30, the combination of McGovern in view of Barney, further in view of ONET, and further in view of Vianello, disclose the method wherein the one or more modified data measures includes skill collection information for the associated occupation (pages 3,7,11-12, and 85, ONET).

Regarding Claim 31, the combination of McGovern in view of Barney, further in view of ONET, and further in view of Vianello, disclose the method wherein the one or more modified data measures includes industry definition information for the associated occupation (pages 14 and 87, ONET).

Regarding Claim 32, the combination of McGovern in view of Barney, further in view of ONET, and further in view of Vianello, disclose the method wherein the one or more modified data measures includes stress related work measure information for the associated occupational title (pages 36,38,and 86, ONET).

Regarding Claim 33, the combination of McGovern in view of Barney, further in view of ONET, and further in view of Vianello, disclose the method wherein the updating includes performing statistical analysis relating to the worker measure information associated with the specified occupation (pages 13 and 56-76, ONET).

Regarding Claim 34, the combination of McGovern in view of Barney, further in view of ONET, and further in view of Vianello, disclose the method wherein the questionnaire is a direct analysis questionnaire configured so that raw data from the form is in a format that facilitates direct submission to a raw data database associated with the computer system (cols.2-3, lines 53-67 and 1-6, respectively; Barney).

Regarding Claim 35, the combination of McGovern in view of Barney, further in view of ONET, and further in view of Vianello, disclose the method wherein the questionnaire is a job analysis questionnaire that models publicly available work desk papers used by disability determination adjudicators (pages 77-83, ONET).

Claim 36 is rejected under the same premise as independent claims 3 and 10.

Response to Arguments

Applicant argues, McGovern does not disclose that its publicly available web site allows users to contribute information that is used to update a collection of occupational information.

Examiner respectfully disagrees. McGovern teaches that the job opening are posted on the internet and anyone who subscribes to the internet can thus have access or “log on” (see col.2, lines 4-6), however, it is not always required to log-on since the internet is a public portal that is available to all, as long as the user has the capabilities. McGovern also discusses a hiring contact (i.e. a user (see col.7, lines 38-41)) that is allowed to edit/update the information for particular positions within a web site by entering information pertaining to the position (col.10, lines 37-56), such as position entry location, category location, brief description, and detailed description (see col.9, lines 35-43). As a result, the above-argued feature has in fact been taught.

An alternate rejection as well as a 112 rejection has also been incorporated (see action above).

Applicant argues the cited references fail to disclose automatically updating a collection of occupational summaries.

Examiner respectfully disagrees. Barney teaches that after a final survey completion, the job analysis wizard does a final analysis that determines whether the job requires new dimensions that are not contained in the database. If the job does require new dimensions, the knowledge management module updates the database with the information (see col.7, lines 14-25). Also, the knowledge management module allows knowledge data in the database to be continually updatable (see col.7, lines 40-44). It is the module that updates the information from the survey about the job information, therefore making it an automation process.

Applicant argues the examiner has failed to establish a prima facie case of obviousness of the claims.

Examiner respectfully disagrees. The applicant specifically argues with reference to independent claims 10 and 36, stating that the claims contain different aspects of the invention (i.e. “analyzing the information in the received questionnaire” and “providing the user with results of the analysis of the questionnaire”) that have not been mentioned and thus is not believed to be supported within the relied upon prior art.

The examiner points out that Barney teaches wherein once the users have completed the survey, at data analysis step, the job analysis wizard allows the analyst to determine dimensions that are critical to the job (see col.6, lines 55-58), thus

corresponding to the claimed analyzing of the information received from the questionnaire³. Next, Barney teaches that after the analysis the job analysis wizard determines whether the job requires new dimensions, and if so, the relational database is updated with the new information (col.7, lines 16-25), thus showing that the user is provided with the results since the information is updated onto the database and will be available for viewing by the user.

Applicant argues that the Barney reference teaches away from the combination with McGovern and ONET.

Examiner respectfully disagrees. To begin, Barney never mentions or discredits anything about job boards, and while McGovern mentions different types of job boards within the background of the specification, McGovern is not categorized as being an actual "job board". Next, while Barney does in fact discuss aspects of the O*Net system, however, Barney does not discourage the use of the system more so than pointing out the differences between the two. Overall, the examiner believes that McGovern, Barney, and ONET are properly combinable due to there field of invention focusing on job recruitment and requirement.

³ Examiner Notes: More analyzing of the information can be found at col.7, lines 1-4.

Points of Contact

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHELCIE DAYE whose telephone number is (571) 272-3891. The examiner can normally be reached on M-F, 7:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Apu Mofiz can be reached on 571-272-4080. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Chelcie Daye
Patent Examiner
Technology Center 2100
July 22, 2010

/Apu M Mofiz/
Supervisory Patent Examiner, Art Unit 2161